

# House Study Bill 582

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED ATTORNEY GENERAL  
BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to the possession, distribution, and reporting of  
2 obscene material and making penalties applicable.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 5236DP 82  
5 jm/rj/14

PAG LIN

1 1 Section 1. Section 728.1, subsection 3, Code 2007, is  
1 2 amended to read as follows:  
1 3 3. "Material" means any book, magazine, newspaper or other  
1 4 printed or written material or any picture, drawing,  
1 5 photograph, motion picture, or other pictorial representation  
1 6 or any statue or other figure, or any recording, transcription  
1 7 or mechanical, chemical or electrical reproduction, or any  
1 8 live transmission, or any other articles, equipment, machines  
1 9 or materials.  
1 10 Sec. 2. Section 728.1, subsection 7, paragraphs e and g,  
1 11 Code 2007, are amended to read as follows:  
1 12 e. Sadomasochistic abuse of a minor for the purpose of  
1 13 arousing or satisfying the sexual desires of a person who may  
1 14 view a visual depiction of the abuse.  
1 15 g. Nudity of a minor for the purpose of arousing or  
1 16 satisfying the sexual desires of a person who may view a  
1 17 visual depiction of the nude minor.  
1 18 Sec. 3. Section 728.1, Code 2007, is amended by adding the  
1 19 following new subsection:  
1 20 NEW SUBSECTION. 11. "Visual depiction" means but is not  
1 21 limited to any picture, drawing, cartoon, painting, slide,  
1 22 photograph, digital or electronic image, book, magazine,  
1 23 negative image, undeveloped film, motion picture, videotape,  
1 24 digital or electronic recording, live transmission, sculpture,  
1 25 or other pictorial or three-dimensional representation.  
1 26 Sec. 4. Section 728.12, subsection 1, Code 2007, is  
1 27 amended to read as follows:  
1 28 1. It shall be unlawful to employ, use, persuade, induce,  
1 29 entice, coerce, solicit, knowingly permit, or otherwise cause  
1 30 or attempt to cause a minor to engage in a prohibited sexual  
1 31 act or in the simulation of a prohibited sexual act. A person  
1 32 must know, or have reason to know, or intend that the act or  
1 33 simulated act may be photographed, filmed, or otherwise  
1 34 preserved in a ~~negative, slide, book, magazine, computer,~~  
1 35 ~~computer disk, or other print or visual medium, or be~~  
2 1 ~~preserved in an electronic, magnetic, or optical storage~~  
2 2 ~~system, or in any other type of storage system~~ visual  
2 3 depiction. A person who commits a violation of this  
2 4 subsection commits a class "C" felony. Notwithstanding  
2 5 section 902.9, the court may assess a fine of not more than  
2 6 fifty thousand dollars for each offense under this subsection  
2 7 in addition to imposing any other authorized sentence.  
2 8 Sec. 5. Section 728.12, subsection 3, unnumbered paragraph  
2 9 1, Code 2007, is amended to read as follows:  
2 10 It shall be unlawful to knowingly purchase or possess a  
2 11 ~~negative, slide, book, magazine, computer, computer disk, or~~  
2 12 ~~other print or visual medium, or an electronic, magnetic, or~~  
2 13 ~~optical storage system, or any other type of storage system~~  
2 14 ~~which depicts a visual depiction of a minor engaging in a~~  
2 15 prohibited sexual act or the simulation of a prohibited sexual  
2 16 act. A person who commits a violation of this subsection  
2 17 commits an aggravated misdemeanor for a first offense and a  
2 18 class "D" felony for a second or subsequent offense. For  
2 19 purposes of this subsection, an offense is considered a second

2 20 or subsequent offense if, prior to the person's having been  
2 21 convicted under this subsection, any of the following apply:

2 22 Sec. 6. Section 728.14, subsection 1, Code 2007, is  
2 23 amended to read as follows:

2 24 1. A commercial film and photographic print processor who  
2 25 has knowledge of or observes, within the scope of the  
2 26 processor's professional capacity or employment, a ~~film,~~  
2 27 ~~photograph, video tape, negative, or slide which depicts~~  
2 28 visual depiction of a minor whom the processor knows or  
2 29 reasonably should know to be under the age of eighteen,  
2 30 engaged in a prohibited sexual act or in the simulation of a  
2 31 prohibited sexual act, shall report the visual depiction to  
2 32 the county attorney immediately or as soon as possible as  
2 33 required in this section. The processor shall not report to  
2 34 the county attorney visual depictions involving mere nudity of  
2 35 the minor, but shall report visual depictions involving a  
3 1 prohibited sexual act. This section shall not be construed to  
3 2 require a processor to review all ~~films, photographs, video~~  
3 3 ~~tapes, negatives, or slides~~ visual depictions delivered to the  
3 4 processor within the processor's professional capacity or  
3 5 employment.

3 6 For purposes of this section, "prohibited sexual act" means  
3 7 any of the following:

3 8 a. A sex act as defined in section 702.17.

3 9 b. An act of bestiality involving a minor.

3 10 c. Fondling or touching the pubes or genitals of a minor  
3 11 for the purpose of arousing or satisfying the sexual desires  
3 12 of a person who may view a visual depiction of the act.

3 13 d. Fondling or touching the pubes or genitals of a person  
3 14 by a minor for the purpose of arousing or satisfying the  
3 15 sexual desires of a person who may view a visual depiction of  
3 16 the act.

3 17 e. Sadomasochistic abuse of a minor for the purpose of  
3 18 arousing or satisfying the sexual desires of a person who may  
3 19 view a visual depiction of the abuse.

3 20 f. Sadomasochistic abuse of a person by a minor for the  
3 21 purpose of arousing or satisfying the sexual desires of a  
3 22 person who may view a visual depiction of the abuse.

3 23 g. Nudity of a minor for the purpose of arousing or  
3 24 satisfying the sexual desires of a person who may view a  
3 25 visual depiction of the nude minor.

3 26 EXPLANATION

3 27 This bill relates to the possession or distribution of  
3 28 obscene material.

3 29 The bill modifies the definition of "material" in Code  
3 30 chapter 728 to include live transmissions.

3 31 Under the bill, the modification of the definition of the  
3 32 term "material" results in changes to the elements of the  
3 33 following criminal offenses: dissemination of obscene  
3 34 material to minors (Code section 728.2), admitting minors to  
3 35 premises where obscene material is exhibited (Code section  
4 1 728.3), rental or sale of hard-core pornography (Code section  
4 2 728.4), sexual exploitation of a minor (Code section  
4 3 728.12(2)), and telephone dissemination of obscene material  
4 4 (Code section 728.15).

4 5 The bill changes the elements of the criminal offense of  
4 6 sexual exploitation of a minor to prohibit purchasing or  
4 7 possessing "visual depictions" of a minor engaged in a  
4 8 prohibited or simulated sex act.

4 9 The bill defines the term "visual depiction" to include any  
4 10 picture, drawing, cartoon, painting, slide, photograph,  
4 11 digital or electronic image, book, magazine, negative image,  
4 12 undeveloped film, motion picture, videotape, digital or  
4 13 electronic recording, live transmission, sculpture, or other  
4 14 pictorial or three-dimensional representation. The bill  
4 15 strikes current references to a computer or other types of  
4 16 storage systems that may preserve such prohibited images.

4 17 The changes to the criminal offense of sexual exploitation  
4 18 of a minor are in response to State v. Muhlenbruch, 728 N.W.2d  
4 19 212 (Iowa 2007).

4 20 The bill also substitutes "visual depiction" for storage  
4 21 systems referenced in Code sections 728.12(1) and 728.14 to  
4 22 conform with the sexual exploitation of a minor changes in  
4 23 Code section 728.12(3) due to the Muhlenbruch case. In  
4 24 addition, the bill adds the word "visual" in Code section  
4 25 728.1(7) to also conform with the changes in the bill.

4 26 LSB 5236DP 82

4 27 jm/rj/14